

then not merely the shareholders would be deprived of their dividend, but the most serious consequences might arise to the credit of the Company, and its position in the share market. If the law, indeed, imperatively demanded this interdict, such considerations would go for nothing. But so long as this remains even in doubt, they are considerations of the highest moment in the question of judicial discretion.

"The complainer asked that, if the Lord Ordinary's view was unfavourable to his demand, he should be enabled to take the opinion of the Inner-House, without any alteration taking place on the existing state of things. Considering that the Court now meets within three days, the Lord Ordinary viewed this as reasonable. Indeed he looks on it as for the interest of the Company itself that, in place of a constant appeal every half-year to the Lord Ordinary on the Bills, the case for one reason or another not getting further, the opinion of the Inner-House should at once be obtained."

The complainer reclaimed.

GIFFORD (LORD-ADVOCATE GORDON, CLARK, and LAMOND, with him) for reclaimer.

YOUNG, WATSON, and JOHNSTONE, for respondents, were not called on.

At advising—

The LORD PRESIDENT thought that in the present question of discretion they ought to adhere to the Lord Ordinary's interlocutor. A great many important questions were raised in this suspension, which it was impossible to determine at present. But plainly any interdict granted now must have an important effect upon the administration of the Company during the trial of these questions, and must be granted very much in the dark, both as to its grounds and effect. He could not say what disastrous effects it might not have on the Company; while, looking to the complainer's interest, that seemed in no such danger. He had been offered caution for any loss he might sustain, which offer he had not accepted, being satisfied evidently that the Company would indemnify him in case he was proved to be right. Plainly he could suffer no damage by delay, while the Company might be great losers if the interdict was granted.

LORD DEAS was of the same opinion. Nothing would induce him to grant the prayer of the complainer except convincing proof that he would suffer loss and damage by refusal, in the event of a final judgment in his favour. Now, the complainer was offered caution, so that his personal interest was protected, and he held no mandate from the public to protect their interest.

LORDS ARDMILLAN and KINLOCH concurred.

Agent for Complainer—W. Mitchell, S.S.C.

Agents for Respondents—Hope & Mackay, W.S.

Wednesday, October 21.

SECOND DIVISION.

MELROSE v. SPALDING.

Reference to Oath—Competency of Reference—Objection. Held that it was no objection to a reference to oath that the party referred to had been adduced as a witness in the cause and cross-examined by the party making the reference.

This was an advocacy from the Sheriff-court of Roxburghshire, of an action in which a claim was

made on account of plaster work done by the pursuer. The defence was a denial of employment. The case came before the Court last session, when a remit was made to the Sheriff to frame findings in facts, he having failed to do so in terms of the Act. These findings having been framed, the case returned to the Court of Session, and the Court adhering to the judgment of the Sheriff (RUTHERFURD) and Sheriff-substitute (RUSSELL) decerned against the defender. The defender thereupon referred the whole case to the pursuer's oath.

KEIR for the pursuer objected to the reference, on the ground that in the evidence led in the action in the Court below the pursuer had been adduced as a witness for himself and had been cross-examined by the defender.

J. C. SMITH for the defender was not called upon.

The Court sustained the reference.

The pursuer's deposition having been taken before the Lord Justice-Clerk, the Court to-day, after hearing Mr SMITH, held the oath to be negative of the reference.

Agent for Advocator—James Somerville, S.S.C.

Agent for Respondent—David Milne, S.S.C.

Wednesday, October 21.

HAMILTON v. THOMSON.

Agent and Client—Business Account—Employment.

Circumstances in which held that employment was proved, and that a party was liable to a law agent in the amount of his business account.

John Thomson, S.S.C., Edinburgh, raised an action in the Sheriff-Court of Bute at Rothesay against James Hamilton, residing at Auchroch in the island of Arran, for £42, 4s. 1d. sterling, "being the amount of an account for law business performed and disbursements made by the pursuer for and on the employment of the defender, commencing the 27th day of April 1866, and ending the 29th day of January 1867." &c. The defence stated was—(1) non-employment; (2) non-liability. The record having been closed in the Inferior Court, and the Sheriff having allowed a proof, the defender, in respect the claim exceeded £40, advocated in terms of the Act of Parliament, 6 Geo. IV. cap. 120, sec. 40. The advocator, in his reasons of advocacy, made a long statement as to the history of an action of suspension in which the pursuer acted as agent, and the question in the case is one of fact, Whether the pursuer, who acted in that matter for the defender, had authority or not?

The Lord Ordinary (MURE) pronounced the following interlocutor and note:—"The Lord Ordinary, having heard parties' procurators, and considered the closed record, proof, productions, and whole process, advocates the cause: Finds, that in the month of April 1866 the pursuer was employed by Mr John Emslie, writer in Ardrossan, to enter appearance for the defender and oppose a note of suspension and interdict, which had been served upon the defender at the instance of Alexander M'Kinnon, farmer in Arran, in order to stop a sale under a pouncing at the instance of the defender, and that the account now sued for was incurred on the said employment: Finds that, when the pursuer was so employed, Mr Emslie was acting as agent for the defender in the recovery of a bill for £13, due by M'Kinnon to the defender, to the proceedings following upon a protest on which bill